

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DAVID M. MILCH, Individually and as  
Custodian for JASON ADAM MILCH, and  
On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

THE GOLDMAN SACHS GROUP, INC.  
and GOLDMAN, SACHS & CO.,

Defendants.

No. 08-CV-3659 JES

ECF Case

**NOTICE OF MOTION AND MOTION OF DAVID M. MILCH  
FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL  
OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD<sup>1</sup>:

PLEASE TAKE NOTICE, that as soon as the matter can be heard in the courtroom of the Honorable John E. Sprizzo, situated at 500 Pearl Street, Courtroom 14C, New York, New York 10007, Proposed Lead Plaintiff, David M. Milch ("Movant"), will move, and hereby does move, under §§21(D) *et seq.* of the Securities Exchange Act of 1934 as amended by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), for an order (a) appointing David M. Milch as Lead Plaintiff, and (b) approving Movant's selection of Glancy Binkow & Goldberg LLP as Lead Counsel for the Class.

Movant seeks appointment as Lead Plaintiff and approval of Lead Plaintiff's choice of counsel pursuant to the Securities Exchange Act of 1934, the Federal Rules of Civil Procedure and the PSLRA. This motion is based on this Notice, the attached memorandum of points and authorities, the declaration of Lionel Z. Glancy and the Court's complete files and records in this action, as well as such further argument as the Court may allow at a hearing on this motion.

Respectfully submitted,

DATED: June 17, 2008

**GLANCY BINKOW & GOLDBERG LLP**

By: s/ **Robert M. Zabb**  
Lionel Z. Glancy  
Robert M. Zabb (RZ-0625)  
1801 Avenue of the Stars, Suite 311

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<sup>1</sup>This motion is filed pursuant to Section 21D of the Securities Exchange Act of 1934 as amended by the PSLRA. This Section provides that, within 60 days after publication of the required notice, any member or members of the proposed class may apply to the Court to be appointed as lead plaintiff, whether or not they have previously filed a complaint in the underlying action. Consequently, counsel for Movant has no way of knowing who the competing lead plaintiff candidates are at this time. As a result, counsel for Movant has been unable to conference with counsel for any competing movants before filing this motion, and respectfully requests that the pre-motion conference requirement be waived.

Los Angeles, California 90067  
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*Proposed Lead Counsel*

**TOPTANI LAW OFFICES**

Edward Toptani  
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*Attorneys for Plaintiff*

**PROOF OF SERVICE VIA OVERNIGHT MAIL**

**Milch v. The Goldman Sachs Group, Inc., et al., No. 08-CV-3659 JES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067.

On June 17, 2008, I served the following document described as:

**1. DECLARATION OF LIONEL Z. GLANCY IN SUPPORT OF MOTION OF DAVID M. MILCH FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**

**2. [PROPOSED] ORDER GRANTING MOTION OF DAVID M. MILCH FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**

**3. NOTICE OF MOTION AND MOTION OF DAVID M. MILCH FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**

**4. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF DAVID M. MILCH FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL**

on counsel for the parties in this action, addressed as stated below:

Stephanie G. Wheeler  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498  
Telephone: (212) 558-4000

Edward Toptani  
Toptani Law Offices  
127 E. 59th St., Third Floor  
New York, New York 10022  
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**By Overnight Mail:** By placing true and correct copies thereof in individual sealed overnight letter envelopes, which I deposited with an official overnight mailing center on June 17, 2008, for delivery overnight.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 17<sup>th</sup>, 2008 Los Angeles, California.

**s/Zabella O. Moore**  
Zabella O. Moore

**UNITED STATES DISTRICT COURT  
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**[PROPOSED] ORDER GRANTING MOTION OF DAVID M. MILCH  
FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF  
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**[PROPOSED] ORDER**

Having considered the motion of David M. Milch for appointment as Lead Plaintiff and approval of Lead Plaintiff's selection of Lead Counsel, the memorandum of law in support thereof, the declaration of Lionel Z. Glancy in support of that motion and good cause appearing therefor,

**IT IS HEREBY ORDERED:**

- 1) The Motion is granted.
- 2) This Order (the "Order") shall apply to the above-captioned consolidated action (the "Action") and to each case that relates to the same subject matter that is subsequently filed in this Court or is transferred to this Court and consolidated with the Action (collectively, the "Consolidated Actions").
- 3) An original of this Order shall be filed by the Clerk in the Master File.
- 4) The Clerk shall mail a copy of this Order to counsel of record in the Consolidated Actions.
- 5) Each new case that arises out of the subject matter of the Action which is filed in this Court or transferred to this Court, shall be consolidated with the Consolidated Actions and this Order shall apply thereto, unless a party objects to consolidation, as provided for herein, or any provision of this Order, within ten (10) days after the date upon which a copy of this Order is served on counsel for such party, by filing an application for relief and this Court deems it appropriate to grant such application. Nothing in the foregoing shall be construed as a waiver of Defendants' right to object to consolidation of any subsequently filed or transferred related action.
- 6) The Court requests the assistance of counsel in calling attention to the Clerk of this Court the filing or transfer of any case that might properly be consolidated as part of the Action.
- 7) When a case that arises out of the same subject matter as the Action is hereinafter filed in this Court or transferred from another Court, the Clerk of this Court

shall:

- a) file a copy of this Order in the separate file for such action;
  - b) mail a copy of this Order to the attorneys for the plaintiff(s) in the newly filed or transferred case and to any new defendant(s) in the newly filed case; and
  - c) make the appropriate entry in the Master Docket for the Consolidated Actions.
- 8) Movant David M. Milch is appointed to serve as Lead Plaintiff in the above-captioned Action, pursuant to 15 U.S.C. §78u-4(a)(3)(B).
- 9) The law firm Glancy Binkow & Goldberg LLP is hereby approved as Lead Counsel for the Class. Lead Counsel shall provide general supervision of the activities of plaintiff's counsel and shall have the following responsibilities and duties to perform or delegate as appropriate:
- a) to brief and argue motions;
  - b) to initiate and conduct discovery, including, without limitation, coordination of discovery with defendants' counsel, preparation of written interrogatories, requests for admission and requests for production of documents;
  - c) to direct and coordinate the examination of witnesses in depositions;
  - d) to act as spokesperson at pretrial conferences;
  - e) to call and chair meetings of plaintiffs' counsel as appropriate or necessary from time to time;
  - f) to initiate and conduct any settlement negotiations with counsel for defendants;
  - g) to provide general coordination of the activities of plaintiffs' counsel and to delegate work responsibilities to selected counsel as may be required in such a manner as to lead to the orderly and efficient prosecution of this litigation and to avoid duplication or unproductive effort;

- h) to consult and employ experts;
- i) to receive and review periodic time reports of all attorneys on behalf of plaintiffs, to determine if the time is being spent appropriately and for the benefit of plaintiffs and to determine and distribute plaintiffs' attorneys' fees; and
- j) to perform such other duties as may be expressly authorized by further order of this Court.

Dated: \_\_\_\_\_, 2008

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HONORABLE JOHN E. SPRIZZO  
UNITED STATES DISTRICT JUDGE



Submitted by:

Lionel Z. Glancy  
Robert M. Zabb (RZ-0625)  
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***Proposed Lead Counsel***

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***Attorneys for Plaintiff***